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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,856	11/01/2001	Quynh T. Pham	J6655(C)	9814

201 7590 02/10/2003

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PATENT DEPARTMENT
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EXAMINER
FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 02/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/044,856	Applicant(s) PHAM ET AL.	
	Examiner Blessing M. Fubara	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Examiner acknowledges receipt of IDS filed 11/01/01.

Specification

1. The use of the trademark such as PEMULEN, DICAPRYL, CETIO, PARSOL, BENZOPHENONR-3 and VICASIL has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Brewster et al. (US 5,128,123).

Brewster discloses a clear cosmetic stick composition comprising 10-90% of a polyhydric alcohol, 1-40% of a soap (salt of a fatty acid), and 1-40% of alkoxylate copolymer and an effective amount of clarifying agent, which is an amine base (abstract, column 2, lines 25-46 and column 3, lines 3-15). The basic amine is present in amounts ranging from about 0.1% to about 20%, the soap is present in amount from about 1% to about 40% and are formed from fatty acids of myristic, palmitic, stearic, oleic, linoleic, linolinic, margaric and mixtures of these

acids, the polyhydric acids are selected from ethylene glycol, propylene glycol, trimethylene glycol, glycerin and sorbitol (column 4, lines 6-56). The composition may also contain bacteriostat or other active agents (column 4, line 57 to column 5 and line 46). Water is present in the composition in amounts of from about 10% to about 60% (column 5, lines 47-51). The composition may contain one or more of the following specific emollients: isopropyl palmitate, cetyl alcohol, stearyl alcohol, diisopropyl adipate, dimethicone copolyol, cyclomethicone, dimethicone and alkyl polyglycosides; and the emollients may be present in amounts ranging from about 1% to 40% (column 6, lines 1-8).

Brewster specifically teaches cosmetic stick comprising propylene glycol that is a polyhydric alcohol, deionized water, sodium stearate, alkoxylated copolymer, irgasan DP-300, amine base and red color (Table 1). The weight percent of the polyhydric alcohol, propylene glycol is 61.50% for formulation A, 60.00 for formulations B and C and 62.00 for formulation D (Table 1). The alkoxylated copolymer is a poly(ethylene oxide)(propylene oxide)(ethylene oxide) copolymer and is included in formulations A-D (Table) in 4 weight percent.

Cyclomethicones and dimethicones are volatile silicon oils (applicants specification, page 6, lines 19 and 20). Crystalline fatty acids include the salts of the fatty acid as admitted by applicants on page 7, lines 6-9 and thus the sodium stearate is a crystalline fatty acid in the context of the instant application. In the instant invention, moisturizer cosmetic for skin and hair is an intended use that is not critical in a composition claim. A composition that reads on the composition of generic claim 1 would inherently be non-sticky. The comprising language of the claims does not exclude the presence of active agents.

The teachings of Brewster read on the scope of the claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brewster et al. (US 5,128,123).

Brewster clearly teaches the composition of the instant invention except that Brewster's examples do not contain volatile silicone oil. However, Brewster suggests incorporating isopropyl palmitate emollients as optional agents in the cosmetic stick and isopropyl palmitate is an oil. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optionally incorporate isopropyl palmitate emollients as suggested by Brewster with the expectation that the emollient would make the cosmetic stick less harsh to the skin. One having ordinary skill in the art would have been motivated to incorporate volatile silicone oil emollients to the cosmetic stick composition of the Brewster so that cosmetic stick would soften and soothe the skin.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brewster et al. (US 5,128,123).

Brewster clearly teaches the composition of the instant invention except that Brewster's examples do not contain an oil. However, Brewster suggests incorporating cyclomethicone or dimethicone emollients as optional agents in the cosmetic stick. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to optionally incorporate the cyclomethicone or dimethicone emollients as suggested by Brewster with the expectation that those emollients would make the cosmetic stick less harsh to the skin. One having ordinary skill in the art would have been motivated to incorporate oil emollient to the cosmetic stick composition of the Brewster so that cosmetic stick would soften and soothe the skin.

7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beerse et al. (US 6,294,186).

Beerse discloses an antimicrobial composition (abstract) and the anti-microbial composition can be applied to the skin (column 4, lines 17 and 29 and column 8, lines 16-27). The composition contains water or alcohol solution as a carrier (column 9, lines 32 and 34). The composition comprises hydrophilic gelling agents amongst which is listed PEMULEN TR-1 and oleogels; the composition may also contain from about 0.1% to about 20% lipophilic skin moisturizing agents/emollients such as polymethyl siloxanes, methylphenylpolysiloxanes, dimethicones , cyclomethicones, alkyl siloxanes and oils (column 10, line 7 to column 11, line 16). Dimethicones may also be present in the composition (column 14, line 13-33). Dimethicone copolyol emulsifiers are useful in Beerse (column 15, line 36 to column 16 line 59). Beerse's composition may also contain conditioning agents selected from humectants, moisturizers or skin conditioners in an amount of from about 0.1% to about 20% and examples of moisturizing agents are polyhydroxy alcohols such as sorbitol, glycerol, hexanetriol, propylene glycol (column 36, lines 14-35). The composition of Beerse contains one or more thickening agents and carboxylic acid polymers are examples of thickening agent that can be

contained in the composition and specific examples of PEMULEN TR-2 and PEMULEN TR-1 are listed (column 36, line 54 to column 38 line 23). Beerse's composition optionally contains detackifying agents that reduce stickiness or tack associated with humectants and/or gelling agents (column 38, lines 33-43). Beerse also discloses that silicone elastomers are also useful as detackifying agents and cyclomethicone and dimethicone crosspolymer blend is listed as example of the silicone elastomer (column 40, lines 33-63).

The various compositions prepared by Beerse are hand sanitizers (examples 1-5 and 14-18), sanitizing wipes (examples 6-10), hand and body moisturizers (examples 11-13 and 19-20), liquid soaps (examples 21-25), solid soap (example 26), dandruff shampoo (example 27-28), foaming facial and body wash (example 32), hard surface sanitizers (examples 29-31 and 33-35), lotioned tissue (examples 36-38), intranasal formulation (examples 39 and 40) and mouth wash (example 41 and 42). Examples 16-18 teach hand compositions that contain 20% glycerin, 8% dipropylene glycol, 22.8-28.09% water, 4% isopropyl palmitate, 9.1-13% cyclomethicone, 11-14.55% cyclomethicone/dimethicone copolyol, salicylic acid, fragrance and synthetic wax. Examples 14 and 15 contain Pemulen TR-1 and Carbopol in addition to glycerin, butylene glycol, cyclomethicone and dimethicone copolyol, cyclomethicone and dimethicone, dimethicone copolyol, salicylic acid and water. The carbopol in examples 14 and 15 is a wetting polymer.

The generic claim of the instant composition is directed broadly to polyhydric alcohol, polymeric wetting agent and cosmetically acceptable vehicle except for specifying amount of the humectant and a range if amount of the polymeric wetting agent.

In examples 14-15, Beerse clearly teaches the composition of the instant invention except that the amount of the polyhydric alcohol is 3.08, which is the sum of the amount of glycerin and butylene glycol. This amount of polyhydric alcohol differs from the recited amount of at least 10% and about 10% to about 90%. At the same time, in examples 16-18, Beerse teaches compositions that can be applied to the hands to provide antibacterial effect in the same way as the compositions in examples 14 and 15 provide for antibacterial effect. The compositions in examples 16-18 contain 28% of polyhydric alcohol, which is the sum of the amounts of glycerin and dipropylene glycol. There is thus a suggestion in Beerse that a hand antibacterial composition could contain polyhydric alcohol in amounts of about 20-28%.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the amount of polyhydric alcohol in the hand composition in examples 14 and 15 of Beerse from 3.08 to about 20-28 %, since Beerse in examples 16-18 teaches hand composition that contains 20-28% polyhydric alcohol, with the expectation of obtaining a hand composition that soothes, softens and moisturizes the skin while providing antibacterial effect.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
Patent Examiner
Tech. Center 1600
February 6, 2003